

REMARKS

The amendments to the claims assume that in view of the filing of this Request for Continued Examination, the amendments proposed after final have been entered. Thus, the claims are presented to indicate the further amendments requested.

Claim 1 has been amended to require that the pet's chew contain at least one starch derivative and that a native starch is merely optional. Support for this amendment is on page 5, lines 20-25. Also, claim 1 has been amended to include as an optional ingredient, polysaccharides which is supported on page 6, lines 3-8.

The additional amendments are straightforward — in claims 5 and 13 the word “further” has been deleted and claims 21 and 22 have been corrected to require a process as they depend from claim 13. Claim 17 has been amended for clarity. No new matter has been added and entry of the amendment is respectfully requested.

The Rejections Over WO01/45517 and EP 0552897

The claims as amended clearly distinguish these documents. First, these documents disclosed chews that include either a protein or a proteinaceous binding, which are now excluded from the claims. Further, as amended, the claims require the presence of a starch derivative which is chemically modified starch and cannot contain only native starch as a starch component. Native starch is only optional. Applicants have shown for the first time that it is possible to make the pet chew with the advantageous properties shown in the exemplified compositions by using a starch derivative rather than native starch so that they contain no proteinaceous binders.

The superiority of compositions that employ chemically modified starch vs. native starch is shown in Table 1 of the specification, Samples 1 (PN: potato starch) and 2 (WN: wheat starch) are comparative Examples and Sample 3 (PMHP: chemically modified potato starch (hydroxypropyl starch) is an embodiment according to the invention. The flexibility of Sample 3 is high, i.e. the E-modulus is low, and stays so during prolonged storage. This means that the material is not stiff, but elastic. A high E-modulus is indicative of a rigid material. This experiment is described in Example 1.

Example 2 of the description compares Samples 1 (PN: potato starch) and 4 (PMAH: chemically modified potato starch (acid hydrolysis)). The shrinkage in the chemically modified potato starch specimen is almost absent (only 0.6%), compared to the native potato starch – a valuable attribute since design features on the surface do not deteriorate over time.

The documents cited in the Advisory Action do not defeat patentability of these claims. In the disclosure of U.S. 5,827,565, no plasticizer is disclosed as present in the composition which is also characterized as “easily chewed” in contrast to the present compositions. The compositions of ‘565 also contain no starch derivative, as the materials contain only Paragon IM 1010 which is described as thermoplastic granules containing 70% potato starch, 15% water, 5-10% calcium carbonate and 1-5% natural vegetable additives.

U.S. 6,159,516 is directed simply to a method of molding edible starch and does not describe utilization of a plasticizer.

Neither does U.S. 6,200,616, disclose use of a plasticizer or a starch derivative as the chews are described as the above-described Paragon IM 1010 product with fruit chips.

With respect to U.S. 6,672,252, the compositions described therein that contain plasticizer also contain only native starch which may indeed contain gluten i.e. a protein binder.

With respect to the issues raised by the Examiner under 35 U.S.C. § 112 in the Advisory Action, the word “further” has been canceled from claims 5 and 13 since these components are already listed as optional in claim 1, and claim 14 has been canceled. The phrase “conditioned to” in claim 17 has been removed.

It is not clear why the term “obtainable” renders claim 19 indefinite; this is simply a product-by-process claim. Corrections have been made to claims 20 and 21 to refer to a process as opposed to a pet’s chew.

Applicants recognize that the product-by-process format does not rely on the process to confer patentability and believe that by describing in detail the components in the mixture the product is distinguished from the art independent of the process of claim 1. The claimed pet chew is new and unobvious by reason of the ingredients included in the process.

Further, applicants comment that the nature of filler materials in this context is well known in the art, and further evidence will be supplied if needed.

The issue of double-patenting will be pursued in due course.

Reconsideration based on the amendment and foregoing discussion is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket No. 313632001800.

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Respectfully submitted,

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